

AMENDED IN ASSEMBLY APRIL 25, 2012

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1616

Introduced by Assembly Member Gatto

*(Coauthors: Assembly Members Huffman, Nestande, V. Manuel Pérez,
and Wieckowski)*

(Coauthor: Senator DeSaulnier)

February 8, 2012

An act to amend Sections 110460, ~~111940~~, 111955, 113789, 114021, and 114023 of, and to add Article 5 (commencing with Section 113400) ~~to Chapter 11 of~~ to add Section 113758 to, and to add Chapter 11.5 (commencing with Section 114365) to Part 6 7 of Division 104 of, the Health and Safety Code, relating to food safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1616, as amended, Gatto. Food safety: cottage food operations.

Existing law, the Sherman Food, Drug, and Cosmetic Law (Sherman Law), requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. The Sherman Law makes it unlawful to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. Food is misbranded if its labeling does not conform to specified federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

The existing California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined, by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. That law ~~also prohibits~~ *exempts private homes from the definition of a food facility, and prohibits* food stored or prepared in a private home from being used or offered for sale in a food facility. A violation of these provisions is a misdemeanor.

This bill would ~~exempt~~ *include* a cottage food operation, as defined, *that is registered or has a permit within the private home exemption of the California Retail Food Code. The bill would also exclude a cottage food operation* from specified food processing establishment; *and Sherman Law, and California Retail Food Code* requirements. This bill would ~~create a classification system for~~ *require a cottage food operations* ~~and would require these classifications~~ *operation* to meet specified requirements relating to training, sanitation, labeling, and permissible types of sales. This bill would require the local health department to ~~adopt implementing regulations, as specified, and procedures for registration and permitting systems for each classification. This bill~~ would also authorize local health officials to ~~access the registered or permitted area of a private home where a cottage food operation is located for purposes of inspection, as specified. This bill would prescribe civil penalties for a violation of its provisions.~~

By imposing duties on local officials *and adding new crimes*, this bill would create a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains

costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Small businesses have played an important role in helping
4 slow economies recover and prosper as an engine of job creation.
5 During the 1990s, small businesses created the majority of new
6 jobs and now account for 65 percent of United States employment.

7 (b) California, and the United States as a whole, are facing
8 growing obesity and obesity-related disease epidemics.

9 (1) Two-thirds of American adults and nearly one-third of
10 children and teens are obese or overweight, placing them at risk
11 for developing chronic diseases such as diabetes, heart disease,
12 and cancer.

13 (2) One in every nine California children, one in three teens,
14 and over half of adults are already overweight or obese. This
15 epidemic affects virtually all Californians.

16 (3) These health conditions are preventable and curable through
17 lifestyle choices that include consumption of healthy fresh foods.

18 (c) For decades, low-income and rural communities have faced
19 limited opportunities to purchase healthy foods. Often, without
20 cars or convenient public transportation options, low-income
21 residents in these areas must rely for much of their shopping on
22 expensive, fatty, processed foods sold at convenience and corner
23 stores.

24 (d) There is a growing movement in California to support
25 community-based food production, sometimes referred to as
26 “cottage food,” “artisanal food,” “slow food,” “locally based food,”
27 or “urban agriculture” movements. These movements seek to
28 connect food to local communities, small businesses, and
29 environmental sustainability.

30 (e) Increased opportunities for entrepreneur development
31 through microenterprises can help to supplement household
32 incomes, prevent poverty and hunger, and strengthen local
33 economies.

(f) At least 25 other states have passed laws that allow small business entrepreneurs to use their home kitchens to prepare, for sale, foods that are not potentially hazardous.

(g) Even some bake sales are currently illegal in California.

(h) It is the intent of the Legislature to enact a homemade food act specifically designed to help address these challenges and opportunities.

SEC. 2. Section 110460 of the Health and Safety Code is amended to read:

110460. No person shall engage in the manufacture, packing, or holding of any processed food in this state unless the person has a valid registration from the department, except those engaged exclusively in the storing, handling, or processing of dried beans. The registration shall be valid for one calendar year from the date of issue, unless it is revoked. The registration shall not be transferable. This section shall not apply to a cottage food operation, ~~as defined in Section 113401 that is registered or has a permit pursuant to Section 114365.~~

~~SEC. 3. Section 111940 of the Health and Safety Code is amended to read:~~

~~111940. (a) If any person violates any provision of Chapter 4 (commencing with Section 111950), Chapter 5 (commencing with Section 112150), Chapter 6 (commencing with Section 112350), Chapter 7 (commencing with Section 112500), Chapter 8 (commencing with Section 112650), Chapter 10 (commencing with Section 113025), Article 3 (commencing with Section 113250) of Chapter 11, or Article 5 (commencing with Section 113400) of Chapter 11, of this part, or Chapter 4 (commencing with Section 108100) of Part 3, or any regulation adopted pursuant to these provisions, the department may assess a civil penalty against that person as provided by this section.~~

~~(b) The penalty may be in an amount not to exceed one thousand dollars (\$1,000) per day. Each day that a violation continues shall be considered a separate violation.~~

~~(c) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a complaint to the person charged with the violation. The complaint shall allege the acts or failures to act that constitute the basis for the violation and the amount of the penalty. The complaint shall be served by~~

1 personal service or by certified mail and shall inform the person
2 so served of the right to a hearing.

3 ~~(d) Any person served with a complaint pursuant to subdivision~~
4 ~~(e) of this section may, within 20 days after service of the~~
5 ~~complaint, request a hearing by filing with the department a notice~~
6 ~~of defense. A notice of defense is deemed to have been filed within~~
7 ~~the 20-day period if it is postmarked within the 20-day period. If~~
8 ~~a hearing is requested by the person, it shall be conducted within~~
9 ~~90 days after the receipt by the department of the notice of defense.~~
10 ~~If no notice of defense is filed within 20 days after service of the~~
11 ~~complaint, the department shall issue an order setting the penalty~~
12 ~~as proposed in the complaint unless the department and the person~~
13 ~~have entered into a settlement agreement, in which case the~~
14 ~~department shall issue an order setting the penalty in the amount~~
15 ~~specified in the settlement agreement. When the person has not~~
16 ~~filed a notice of defense or where the department and the person~~
17 ~~have entered into a settlement agreement, the order shall not be~~
18 ~~subject to review by any court or agency.~~

19 ~~(e) Any hearing required under this section shall be conducted~~
20 ~~pursuant to the procedures specified in Section 100171, except to~~
21 ~~the extent they are inconsistent with the specific requirements of~~
22 ~~this section.~~

23 ~~(f) Orders setting civil penalties under this section shall become~~
24 ~~effective and final upon issuance thereof, and payment shall be~~
25 ~~made within 30 days of issuance. A copy of the order shall be~~
26 ~~served by personal service or by certified mail upon the person~~
27 ~~served with the complaint.~~

28 ~~(g) Within 30 days after service of a copy of a decision issued~~
29 ~~by the director after a hearing, any person so served may file with~~
30 ~~the superior court a petition for writ of mandate for review of the~~
31 ~~decision. Any person who fails to file the petition within this~~
32 ~~30-day period may not challenge the reasonableness or validity of~~
33 ~~the decision or order of the director in any judicial proceeding~~
34 ~~brought to enforce the decision or order or for other remedies.~~
35 ~~Section 1094.5 of the Code of Civil Procedure shall govern any~~
36 ~~proceedings conducted pursuant to this subdivision. In all~~
37 ~~proceedings pursuant to this subdivision, the court shall uphold~~
38 ~~the decision of the director if the decision is based upon substantial~~
39 ~~evidence in the whole record. The filing of a petition for writ of~~
40 ~~mandate shall not stay any corrective action required pursuant to~~

1 the Miscellaneous Food, Food Facility, and Hazardous Substances
2 Act, as defined in subdivision (b) of Section 27, or the accrual of
3 any penalties assessed pursuant to this section. This subdivision
4 does not prohibit the court from granting any appropriate relief
5 within its jurisdiction.

6 (h) ~~The remedies under this section are in addition to, and do~~
7 ~~not supersede, or limit, any and all other remedies, civil or criminal.~~

8 SEC. 4.

9 SEC. 3. Section 111955 of the Health and Safety Code is
10 amended to read:

11 111955. "Food processing establishment," as used in this
12 chapter, shall mean any room, building, or place or portion thereof,
13 maintained, used, or operated for the purpose of commercially
14 storing, packaging, making, cooking, mixing, processing, bottling,
15 canning, packing, slaughtering, or otherwise preparing or handling
16 food except restaurants. "Food processing establishment" shall
17 not include a cottage food operation, as defined in Section 113401
18 *that is registered or has a permit pursuant to Section 114365.*

19 SEC. 5. ~~Article 5 (commencing with Section 113400) is added~~
20 ~~to Chapter 11 of Part 6 of Division 104 of the Health and Safety~~
21 ~~Code, to read:~~

22
23 Article 5. Cottage Food Operations
24

25 113400. ~~This article shall be known, and may be cited, as the~~
26 ~~California Homemade Food Act.~~

27 113401. ~~Unless the context otherwise requires, the meaning~~
28 ~~of terms used in this article, as applicable, shall be the same as the~~
29 ~~definitions found under the California Retail Food Code (Part 7~~
30 ~~(commencing with Section 113700)). Additionally, for the purposes~~
31 ~~of this article, the following definitions apply:~~

32 (a) ~~"Adulterated" means either of the following:~~

33 (1) ~~Food that bears or contains any poisonous or deleterious~~
34 ~~substance that may render the food impure or injurious to health.~~

35 (2) ~~Food that is manufactured, prepared, or stored in a manner~~
36 ~~that deviates from a HACCP plan, as defined in Section 113801,~~
37 ~~so as to pose a discernable increase in risk.~~

38 (b) ~~"Cottage food operation" means an enterprise operated in a~~
39 ~~private home where cottage food products are prepared or packaged~~
40 ~~to be sold directly to consumers, including through the Internet or~~

1 mail order, and to in-state retail food facilities pursuant to this
2 article.

3 (1) “Class “A” cottage food operation” means a type of cottage
4 food operation that meets the requirements of Section 113411.

5 (2) “Class “B” cottage food operation” means a type of cottage
6 food operation that meets the requirements of Section 113412.

7 (c) “Cottage food operator” means an individual who operates
8 a cottage food operation in his or her private home and is the owner
9 of the cottage food operation.

10 (d) “Cottage food products” means foods that are prepared for
11 sale in the home kitchen of a person’s primary private home and
12 are not potentially hazardous food, as defined in Section 113871.

13 (e) “Direct sale” means a transaction between a cottage food
14 operation operator and a consumer, where the consumer is
15 purchasing the cottage food product directly from the cottage food
16 operation. Direct sales include, but are not limited to, holiday
17 bazaars, temporary events such as bake sales, farm stands, certified
18 farmers’ markets, community-supported agriculture subscriptions,
19 food swaps, and sales occurring directly in the home.

20 (f) “Employee” means an individual, paid or volunteer, who is
21 involved in the preparation, packaging, handling, and storage of
22 a cottage food product, or otherwise works for the cottage food
23 operation. An employee does not include an immediate family
24 member or household member of the cottage food operation
25 operator.

26 (g) “Home kitchen” means a kitchen primarily intended for use
27 by residents of a private home. It may contain one or more stoves
28 or ovens, including a double oven, and shall be designed for
29 residential use.

30 (h) “Indirect sale” means an interaction between a cottage food
31 operation, a third-party retailer, and a consumer, where the
32 consumer is purchasing cottage food products, made by the cottage
33 food operation, from a third-party retailer. Indirect sales include,
34 but are not limited to, sales made to retail shops and restaurants,
35 sales through an Internet Web site operated by the cottage food
36 operation, and sales made through third-party-operated Internet
37 Web sites.

38 (i) “Registered or permitted area” means the portion of a private
39 home where the preparation, packaging, storage, or handling of
40 cottage food products, ingredients, or equipment occurs.

1 (j) ~~“Potentially hazardous food” has the meaning provided in~~
2 ~~Section 113871.~~

3 (k) ~~“Private home” means a dwelling, or an area within a rental~~
4 ~~unit, where individuals reside.~~

5 113402. (a) ~~The department shall establish a list of permissible~~
6 ~~foods to be sold by a cottage food operation. The list shall be~~
7 ~~limited to foods that are not potentially hazardous and shall include,~~
8 ~~but not be limited to, all of the following:~~

9 (1) ~~Baked goods without cream, custard, or meat fillings, such~~
10 ~~as breads, tortillas, cookies, churros, and pastries.~~

11 (2) ~~Jams, jellies, preserves, and fruit butter.~~

12 (3) ~~Candy, such as toffee and brittle.~~

13 (4) ~~Fruit pies, and fruit or vegetable tamales and empanadas.~~

14 (5) ~~Granola and other dried cereal.~~

15 (6) ~~Popecorn.~~

16 (7) ~~Waffle cones and pizelles.~~

17 (8) ~~Nut mixes.~~

18 (9) ~~Chocolate-covered nonperishable foods, such as nuts and~~
19 ~~dried fruit.~~

20 (10) ~~Roasted coffee and dried tea.~~

21 (11) ~~Dry baking mixes.~~

22 (12) ~~Herb blends and dried mole paste.~~

23 (13) ~~Honey and sweet sorghum syrup.~~

24 (14) ~~Dried fruit.~~

25 (15) ~~Dried pasta.~~

26 (16) ~~Rice cakes and rice noodles.~~

27 (17) ~~Vinegar and mustard.~~

28 (18) ~~Kombucha.~~

29 (b) ~~The list of permissible foods described in subdivision (a)~~
30 ~~shall not be restricted by a local government.~~

31 113403. ~~The local health department shall adopt regulations~~
32 ~~reasonably necessary to implement this article. The regulations~~
33 ~~shall include, but are not limited to, all of the following:~~

34 (a) (1) ~~Procedures for a registration system, including provisions~~
35 ~~for reasonable fees, for Class “A” cottage food operations. The~~
36 ~~fees shall not exceed the reasonable regulatory costs of~~
37 ~~administering the registration system.~~

38 (2) ~~The registration system shall include the following:~~

39 (A) ~~A self-certification checklist, verifying that the cottage food~~
40 ~~operation will follow best management practices, as determined~~

1 by the local health department. The best management practices
2 shall further the intent and purpose of this article.

3 (B) Notice to the applicant that the local health department may
4 seek recovery for the costs associated with an inspection of a Class
5 “A” cottage food operation found to be in violation of this article
6 or regulations adopted pursuant to this article. The recovery shall
7 not exceed the local health department’s reasonable costs incurred
8 inspecting the cottage food operation.

9 (b) (1) Procedures for a permitting system, including provisions
10 for reasonable fees, for Class “B” cottage food operations. The
11 fees shall not exceed the reasonable regulatory costs of
12 administering the permitting system.

13 (2) The permitting system shall include an initial inspection of
14 the cottage food operation premises before a permit is issued to
15 the applicant.

16 (c) Appropriate and reasonable sanitary procedures, in addition
17 to those required by this article.

18 113404. A cottage food operation is subject to the following
19 requirements:

20 (a) Preparation, packaging, or handling of cottage food products
21 shall not occur in the home kitchen simultaneously with any other
22 domestic activities. Prohibited activities may include, but are not
23 limited to:

24 (1) Family meal preparation.

25 (2) Dishwashing unrelated to cottage food production.

26 (3) Clothes washing or ironing.

27 (4) Kitchen cleaning unrelated to cottage food production.

28 (b) Infants, small children, or pets shall not be allowed in the
29 home kitchen during the preparation, packaging, or handling of
30 any cottage food products.

31 (c) All food contact surfaces, equipment, and utensils used for
32 the preparation, packaging, or handling of any cottage food
33 products shall be washed, rinsed, and sanitized before each use.

34 (d) All food preparation and food equipment storage areas shall
35 be maintained free of rodents and insects.

36 (e) A person involved in the preparation and packaging of
37 cottage food products shall comply with all of the following:

38 (1) The person may not work in the home kitchen when sick
39 with a contagious illness.

~~(2) The person shall wash his or her hands before any food preparation and food packaging activity.~~

~~(f) Preparation, packaging, handling, or storage of cottage food products shall take place only within the registered or permitted area.~~

~~113405. Water used during the preparation of cottage food products shall meet the potable drinking water standards in the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270)) and any other requirements with regard to potable water, as defined by Section 113869. This includes water used for all of the following:~~

~~(a) The washing, sanitizing, and drying of any equipment used in the preparation of a cottage food product.~~

~~(b) The washing, sanitizing, and drying of hands and arms.~~

~~(c) The preparation of the cottage food products.~~

~~113406. (a) A cottage food operation shall package and label any food it produces or packages for sale in compliance with the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343-1 et seq.).~~

~~(b) A cottage food operation shall include on its cottage food package a statement of disclosure informing the consumer that the cottage food product was prepared in a private home.~~

~~113407. A cottage food operation shall not have more than one employee, not including the cottage food operator.~~

~~113408. An employee, or persons who otherwise work for the cottage food operation, shall complete a food handler course, as approved by the local health department, prior to commencing employment or work with the cottage food operation.~~

~~113409. A cottage food operation shall not have more than fifty thousand dollars (\$50,000) in gross annual sales.~~

~~113410. All of the following shall apply to cottage food operations:~~

~~(a) A city, county, or city and county shall not prohibit cottage food operations in any residential dwellings, but shall do one of the following:~~

~~(1) Classify these operations as a permitted use of residential property for zoning purposes.~~

~~(2) Grant a nondiscretionary permit to use a residence as any cottage food operation that complies with local ordinances prescribing reasonable standards, restrictions, and requirements~~

1 concerning spacing and concentration, traffic control, parking, and
2 noise control relating to those homes. Any noise standards shall
3 be consistent with local noise ordinances implementing the noise
4 element of the general plan. The permit issued pursuant to this
5 paragraph shall be granted by the zoning administrator, or if there
6 is no zoning administrator, by the person or persons designated
7 by the planning agency to grant these permits, upon the certification
8 without a hearing.

9 (3) Require any cottage food operation to apply for a permit to
10 use a residence for its operation. The zoning administrator, or if
11 there is no zoning administrator, the person or persons designated
12 by the planning agency to handle the use permits, shall review and
13 decide the applications. The use permit shall be granted if the
14 cottage food operation complies with local ordinances, if any,
15 prescribing reasonable standards, restrictions, and requirements
16 concerning the following factors: spacing and concentration, traffic
17 control, parking, and noise control relating to those homes. Any
18 noise standards shall be consistent with local noise ordinances
19 implementing the noise element of the general plan. The local
20 government shall process any required permit as economically as
21 possible. Fees charged for review shall not exceed the costs of the
22 review and permit process. An applicant may request a verification
23 of fees, and the city, county, or city and county shall provide the
24 applicant with a written breakdown within 45 days of the request.
25 The application form for cottage food operation permits shall
26 include a statement of the applicant's right to request the written
27 fee verification.

28 (b) In connection with any action taken pursuant to paragraph
29 (2) or (3) of subdivision (a), a city, county, or city and county shall
30 do all of the following:

31 (1) Upon the request of an applicant, provide a list of the permits
32 and fees that are required by the city, county, or city and county,
33 including information about other permits that may be required
34 by other departments in the city, county, or city and county, or by
35 other public agencies. The city, county, or city and county shall,
36 upon request of any applicant, also provide information about the
37 anticipated length of time for reviewing and processing the permit
38 application.

~~(2) Upon the request of an applicant, provide information on the breakdown of any individual fees charged in connection with the issuance of the permit.~~

~~(3) If a deposit is required to cover the cost of the permit, provide information to the applicant about the estimated final cost to the applicant of the permit, and procedures for receiving a refund from the portion of the deposit not used.~~

~~(e) Use of a residence for the purposes of a cottage food operation shall not constitute a change of occupancy for purposes of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13), or for purposes of local building and fire codes.~~

~~(d) Cottage food operations shall be considered residences for the purposes of the State Uniform Building Standards Code and local building and fire codes.~~

~~113411. In addition to other requirements imposed by this article, a Class "A" cottage food operation shall be subject to all of the following conditions:~~

~~(a) Shall engage only in the direct sale of cottage food products.~~

~~(b) Shall register with the local health department in accordance with regulations implemented pursuant to Section 113403.~~

~~(c) (1) Shall not be subject to initial or routine inspections.~~

~~(2) (A) For purposes of determining compliance with this article, a local health official may access, for inspection purposes, the registered area of a private home where a cottage food operation is located only if the official has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the cottage food operation, or that the cottage food operation has violated this article.~~

~~(B) An inspection pursuant to this subdivision shall be made at a reasonable time and during regular business hours.~~

~~(C) If the official is denied access to the registered area where access was sought for the purpose of enforcing this article, the official may apply to a court of competent jurisdiction for, and the court may issue, a search warrant authorizing access to the registered area.~~

~~(D) Access under this subdivision is limited to the registered area and solely for the purpose of enforcing or administering this article.~~

1 ~~(E) Pursuant to Section 113403, a Class “A” cottage food~~
2 ~~operation found to be in violation of this article, or regulations~~
3 ~~adopted pursuant to this article, shall be responsible for the costs~~
4 ~~incurred by the local health department in executing the inspection.~~

5 ~~113412. In addition to other requirements imposed by this~~
6 ~~article, a Class “B” cottage food operation shall be subject to all~~
7 ~~of the following conditions:~~

8 ~~(a) Shall be permitted to engage in the direct and indirect sale~~
9 ~~of cottage food products.~~

10 ~~(b) Shall obtain a permit from the local health department in~~
11 ~~accordance with regulations implemented pursuant to Section~~
12 ~~113403. The permit shall authorize the cottage food operation to~~
13 ~~prepare and sell cottage food products through direct or indirect~~
14 ~~sales.~~

15 ~~(c) (1) Shall be subject to no more than one inspection per year~~
16 ~~by the local health department except as provided under paragraph~~
17 ~~(2).~~

18 ~~(2) (A) For purposes of determining compliance with this~~
19 ~~article, a local health official may access, for inspection purposes,~~
20 ~~the permitted area of a private home where a cottage food operation~~
21 ~~is located only if the official has, on the basis of a consumer~~
22 ~~complaint, reason to suspect that adulterated or otherwise unsafe~~
23 ~~food has been produced by the cottage food operation, or that the~~
24 ~~cottage food operation has violated this article.~~

25 ~~(B) An inspection pursuant to this subdivision shall be made at~~
26 ~~a reasonable time and during regular business hours.~~

27 ~~(C) If the official is denied access to the permitted area where~~
28 ~~access was sought for the purpose of enforcing this article, the~~
29 ~~official may apply to court of competent jurisdiction for, and the~~
30 ~~court may issue, a search warrant authorizing access to the~~
31 ~~permitted area.~~

32 ~~(D) Access under this subdivision is limited to the permitted~~
33 ~~area and solely for the purpose of enforcing or administering this~~
34 ~~article.~~

35 *SEC. 4. Section 113758 is added to the Health and Safety Code,*
36 *to read:*

37 *113758. (a) “Cottage food operation” means an enterprise*
38 *that has not more than fifty thousand dollars (\$50,000) in gross*
39 *annual sales and is operated by a cottage food operator and not*
40 *more than one cottage food employee within the registered or*

1 *permitted area of a private home where cottage food products are*
2 *prepared or packaged for direct, indirect, or direct and indirect*
3 *sale to consumers pursuant to this part. A cottage food operation*
4 *includes both of the following:*

5 *(1) A “Class A” cottage food operation that only directly sells*
6 *cottage food products.*

7 *(2) A “Class B” cottage food operation that directly, indirectly,*
8 *or directly and indirectly sells cottage food products.*

9 *(b) For purposes of this section, the following definitions shall*
10 *apply:*

11 *(1) “Cottage food employee” means an individual, paid or*
12 *volunteer, who is involved in the preparation, packaging, handling,*
13 *and storage of a cottage food product, or otherwise works for the*
14 *cottage food operation. An employee does not include an immediate*
15 *family member or household member of the cottage food operation*
16 *operator.*

17 *(2) “Cottage food operator” means an individual who operates*
18 *a cottage food operation in his or her private home and is the*
19 *owner of the cottage food operation.*

20 *(3) “Cottage food products” means not potentially hazardous*
21 *foods, subject to approval by the department, that are prepared*
22 *for sale in the kitchen of a cottage food operation.*

23 *(4) “Direct sale” means a transaction between a cottage food*
24 *operation operator and a consumer, where the consumer purchases*
25 *the cottage food product directly from the cottage food operation.*
26 *A direct sale includes, but is not limited to, transactions within*
27 *holiday bazaars, during a temporary event, including a bake sale,*
28 *farm stands, certified farmers’ markets, community-supported*
29 *agriculture subscriptions, food swaps, and transactions occurring*
30 *in person in the home.*

31 *(5) “Indirect sale” means an interaction between a cottage food*
32 *operation, a third-party retailer, and a consumer, where the*
33 *consumer purchases cottage food products made by the cottage*
34 *food operation from a third-party retailer. Indirect sales include,*
35 *but are not limited to, sales made to retail shops and retail food*
36 *facilities where food may be immediately consumed on the*
37 *premises.*

38 *(6) “Private home” means a dwelling, including an apartment*
39 *or other leased space, where individuals reside.*

(7) “Registered or permitted area” means the portion of a private home used for the preparation, packaging, storage, or handling of cottage food products and related ingredients or equipment, or both.

~~SEC. 6.~~

SEC. 5. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) “Food facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities.

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) “Food facility” does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home, including a cottage food operation, ~~as defined in Section 113401~~ that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing plant as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

~~SEC. 7.~~

SEC. 6. Section 114021 of the Health and Safety Code is amended to read:

114021. (a) Food shall be obtained from sources that comply with all applicable laws.

(b) Food stored or prepared in a private home shall not be used or offered for sale in a food facility, unless that food is prepared

1 by a cottage food operation that meets the requirements of Article
2 5 (commencing with Section 113400) of Chapter 11 of Part 6 is
3 registered or has a permit pursuant to Section 114365.

4 ~~SEC. 8.~~

5 SEC. 7. Section 114023 of the Health and Safety Code is
6 amended to read:

7 114023. Food in a hermetically sealed container shall be
8 obtained from a food processing plant that is regulated by the food
9 regulatory agency that has jurisdiction over the plant, or from a
10 cottage food operation that meets the requirements of Article 5
11 (commencing with Section 113400) of Chapter 11 of Part 6 is
12 registered or has a permit pursuant to Section 114365.

13 ~~SEC. 9. If the Commission on State Mandates determines that~~
14 ~~this act contains costs mandated by the state, reimbursement to~~
15 ~~local agencies and school districts for those costs shall be made~~
16 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
17 ~~4 of Title 2 of the Government Code.~~

18 SEC. 8. Chapter 11.5 (commencing with Section 114365) is
19 added to Part 7 of Division 104 of the Health and Safety Code, to
20 read:

21
22 CHAPTER 11.5. COTTAGE FOOD OPERATIONS
23

24 114365. (a) (1) A "Class A" cottage food operation shall not
25 be open for business unless it is registered with the local
26 enforcement agency in a manner that includes a self-certification
27 checklist approved by the local enforcement agency that verifies
28 that the cottage food operation conforms to this chapter and with
29 the inspection requirements described on pages 5 and 6 of the
30 April 2012 Regulatory Guidance for Best Practices: Cottage
31 Foods, prepared by the Association of Food and Drug Officials.

32 (2) A "Class B" cottage food operation shall not be open for
33 business unless it obtains a permit from the local enforcement
34 agency in a manner approved by the local enforcement agency to
35 engage in the direct and indirect sale of cottage food products.

36 (b) (1) A registration or permit shall be issued by the
37 enforcement agency when an investigation has determined that
38 the proposed cottage food operation and its method of operation
39 conform to this chapter.

1 (2) A registration or permit, once issued, is nontransferable. A
2 registration or permit shall be valid only for the person, location,
3 type of food sales, or distribution activity, and, unless suspended
4 or revoked for cause, for the time period indicated.

5 (c) A local enforcement agency may seek recovery from a
6 cottage food operation of an amount that does not exceed the local
7 enforcement agency's reasonable costs of inspecting a "Class A"
8 or "Class B" cottage food operation for compliance with this
9 chapter.

10 114365.2. A cottage food operation that is registered or has a
11 permit issued pursuant to Section 114365 shall be considered a
12 restricted food service facility for purposes of, and subject to,
13 Sections 113953.5, 114101, 114130, 114149.1, 114256.1,
14 114259.5, 114268, 114279, 114285, and 114286. A cottage food
15 operation that is registered or has a permit also shall be subject
16 to Sections 113715 and 113980 and to all of the following
17 requirements:

18 (a) A person shall refrain from work in the registered or
19 permitted area of the cottage food operation with a contagious
20 illness.

21 (b) A person involved in the preparation or packaging of cottage
22 food products shall keep his or her hands and exposed portions
23 of his or her arms clean and shall wash his or her hands before
24 any food preparation or packaging activity in a cottage food
25 operation.

26 (c) Water used during the preparation of cottage food products
27 shall meet the potable drinking water standards described in
28 Section 113869, except that a cottage food operation shall not be
29 required to have an indirect sewer connection. Water used during
30 the preparation of cottage food products includes both of the
31 following:

32 (1) The washing, sanitizing, and drying of any equipment used
33 in the preparation of a cottage food product.

34 (2) The washing, sanitizing, and drying of hands and arms.

35 (d) A person who prepares or packages cottage food products
36 shall complete a food handler course described in Section 113948.

37 (e) A cottage food operation shall include on its cottage food
38 package a statement of disclosure informing the consumer that
39 the cottage food product was prepared in a private home.

1 114365.5. (a) The department shall adopt and post on its
2 Internet Web site a list of not potentially hazardous foods that are
3 approved for sale by a cottage food operation.

4 (b) This list of not potentially hazardous foods shall include,
5 but not be limited to, all of the following:

6 (1) Baked goods without cream, custard, or meat fillings, such
7 as breads, churros, cookies, pastries, and tortillas.

8 (2) Candy, such as brittle and toffee.

9 (3) Chocolate-covered nonperishable foods, such as nuts and
10 dried fruit.

11 (4) Dried fruit.

12 (5) Dried pasta.

13 (6) Dry baking mixes.

14 (7) Fruit pies.

15 (8) Fruit or vegetable empanadas and tamales.

16 (9) Granola and other dried cereal.

17 (10) Herb blends and dried mole paste.

18 (11) Honey and sweet sorghum syrup.

19 (12) Jams, jellies, preserves, and fruit butter.

20 (13) Kombucha.

21 (14) Nut mixes and nut butters.

22 (15) Popcorn.

23 (16) Rice cakes and rice noodles that comply with the handling
24 and labeling requirements of Sections 111222 and 111223.

25 (17) Vinegar and mustard.

26 (18) Roasted coffee and dried tea.

27 (19) Waffle cones and pizelles.

28 SEC. 9. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution for certain
30 costs that may be incurred by a local agency or school district
31 because, in that regard, this act creates a new crime or infraction,
32 eliminates a crime or infraction, or changes the penalty for a crime
33 or infraction, within the meaning of Section 17556 of the
34 Government Code, or changes the definition of a crime within the
35 meaning of Section 6 of Article XIII B of the California
36 Constitution.

37 However, if the Commission on State Mandates determines that
38 this act contains other costs mandated by the state, reimbursement
39 to local agencies and school districts for those costs shall be made

- 1 *pursuant to Part 7 (commencing with Section 17500) of Division*
- 2 *4 of Title 2 of the Government Code.*

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